IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 233 of 2004

SHRI SAINIK SATRIYA VISHNU BHAGWAN TRUST
V/S
CHAMPALAL

Mr. US GEHLOT, for the appellant / petitioner

None present for the respondent

Date of Order : 11.10.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The plaintiff was given sufficient number of opportunities to lead evidence, and he failed to appear in the witness box even as plaintiff. In that view of the matter both the learned courts below have dismissed the suit.

It was sought to be contended by the learned counsel that on the first date of hearing fixed for the plaintiff's evidence, the plaintiff was present but the learned Presiding Officer was not there, then on the second date the file was not taken out from the office, then on the third date he had gone out of station, and on the fourth date also he was out of station for his personal work, and on the fifth date the plaintiff was ill, however, on the fifth date the suit was dismissed.

In my view, a look at the memo of appeal filed before the learned lower Appellate Court shows that it is not mentioned therein that on the first date the plaintiff was present. So far second date is concerned, a look at the order sheets of the learned trial court shows that regular order sheets has been drawn showing presence of counsel for the plaintiff but absence of the witnesses. Then, on two dates admittedly the plaintiff was not present may be that he had gone for the purpose of trust, or his personal work, and then regarding the fifth date, apart from the fact that even in the memo of appeal before the learned lower Appellate Court, nature of ailment has not been disclosed, any medical certificate has also not been filed. In my view, in view of the above facts, it cannot be said that appellant was not given sufficient opportunity to lead evidence, or that the learned courts below were in error in dismissing the suit.

The present appeal thus appeal does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/